Mr. A. Madhava Prabhu *(Diwan Peishkar):* I move that the Bill may be taken up and finally passed to-morrow.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

The Cochin Anchal Bill

Mr. B. V. K. Menon *(Joint Secretary to Government):* I move that the Cochin Anchal Bill be read in Council.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Secretary to the Council: The Title of the Bill is the Cochin Anchal Bill.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I request that Standing Order No. 32 be suspended. This also is a Bill which is meant to bring our Act in conformity with the British Indian Postal Act and the Travancore Anchal Act. It is not at all a controversial matter. The present Act was passed in the year 1067. Many years have passed by. I request that this Bill may be taken into consideration immediately suspending Standing Order No. 32.

Mr. President: Standing Order is suspended.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I move that the Cochin Anchal Bill be taken into consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Clauses 2 to 66 put and carried

Schedule and forms put and carried

Clause 1, Title and Preamble put and carried

Mr. B. V. K. Menon *(Joint Secretary to Government):* I move that the Bill may be taken up and finally passed to-morrow.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

The Cochin Municipal Act (Amendment) Bill

Mr. C. J. Mathew *(Joint Secretary to Government):* Sir, I move that the Cochin Municipal Act Amendment Bill be read in Council.

Mr. B. V. K. Menon *(Joint Secretary to Government):* I second it.

Mr. P. P. Devassy *(Trichur-South):* Sir, I have given notice of an Amendment.

Mr. President: That comes later.

Mr. C. J. Mathew *(Joint Secretary to Governmnt):* Sir, Though the Statement of Objects and Reasons sufficiently explain the object of Government for introducing such an amendment to the Municipal Act, I wish to add a few words by way of explaining further the provisions of this amending Bill. According to the existing provisions in the Municipal Act Government can remove a Commissioner within his ordinary term of 3 years only when the Commissioner is proved to be insufficient or negligant or incapable in the discharge of his duties or where his removal is sought by a vote of the Council itself. This provision will not authorise Government in removing him when exigencies of service actually demands it. The amendment seeks to bring the provision in line with the provision in the Madras District Municipalities Act. The other main amendment sought by the Bill is to disqualify a member to continue in office after he accepts office under Government. Though the Act disqualifies a Government servant from standing for election to the Council there is no express provision prohibiting a member from continuing as member when he accepts office under Government after his election. Provision on analogous lines is contained in the Government of Cochin Act and the Madras District Municipalities Act and the House will agree that it is only proper that the councillor ceases to be a member after acceptance of office under Government. I commend the motion for the kind acceptance of the House.

Mr. A. B. Salem *(Mattancheri):* When a man accepts an appointment under the Government does it *ipso facto* disqualify him to be a Councillor ?

Mr. C. J. Mathew *(Joint Secretary to Government):* As matters now stand he can continue as a Councillor. There is nothing to disqualify him.

Mr. A. B. Salem *(Mattancheri):* Are we not removing Commissioners within the 3 years Now ?

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Mr. C. J. Mathew *(Joint Secretary to Government):* Yes, but it has been recently questioned by the Ernakulam Municipality. Hence Government thought it necessary to move this amendment.

Motion put and carried

Secretary to the Council: The title of the bill is the Cochin Municipal Act Amendment Bill.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, with very great seriousness I move that this important amending Bill which provides for the removal of the Chief Executive Officer of the Municipality, a Government servant or a quasi Government servant, or for purpose of my discussion even if he is not an employee of the Municipality it does not affect the issue, which requires a certain proportion or percentage of the total sanctioned strength of a Council which is the first point of amendment here may be referred to a select committee.

Mr. C. J. Mathew *(Joint Secretary to Government):* There is no intention to touch that provision at all.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* What is the new provision.

Mr. C. J. Mathew *(Joint Secretary to Government):* The new provision does not in the least affect the existing one. The power of the Council remains as it is and Government are bound to accept their resolution even under the new provision.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I am constrained to observe that I am deliberately misunderstood. Let me first tell the House how I feel on the subject and why I want the Select Committee. Here is the Bill which provides: "The Government may, at any time, remove the Commissioner from Office and shall do so if such removal is recommended by a resolution of the Council passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the sanctioned strength of the Council." Such is the first item of the amendment Bill that is sought to be put through, which affects local bodies. The point that I want to stress and the reason why I say that a select Committee is necessary to examine this small bill is with regard to the existing powers of the Council, *viz.*, to recommend removal on the percent mentioned here; but the addition is that the Government is bound if such a recommendation comes.

Mr. C. J. Mathew *(Joint Secretary to Government):* The provision in the old Act is not touched by the amendment proposed.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Then what is the substitution ?

Mr. C. J. Mathew *(Joint Secretary to Government):* "There is only an addition, namely that the Government may at any time remove the Commissioner."

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I think the Honourable Member for Vadakkancheri is labouring under a misapprehension. When a resolution is passed by a Municipal Council with the requisite majority as laid down in the section, the Government is bound to remove the Commissioner because the word used in the clause is, "shall". It is mandatory and not directory. It exists in that form in the present Act and it has not been altered in the present Amendment also. What is meant by this Amendment is that the Government may have irrespective of the time fixed by the Act, namely 3 years, the power to remove or transfer the Commissioner. The objection seems to be raised on the assumption that if the Amendment is passed the Government will have the option in spite of the Council's resolution of no confidence to retain the Commissioner there. It is not correct. That precious right the Council still has, and it is never the intention of the Government to touch that power at all. It is only to meet a specific requirement that this Amendment is brought forward. The Ernakulam Municipal Council raised a point when the Commissioner happened to be transferred within the statutory period of three years, that the Government have no power to do so. In the exigencies of service it has been found necessary to change these officers at times and in order that objection may not be raised, we thought it better to take power for removing the Commissioners, if necessary, even before they had completed a service of three years. Therefore there is absolutely no reason for complaint with regard to this Amendment. So a reference to a Select Committee is quite unnecessary.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* In the light of the elucidation by the Hon'ble Advocate-General which has removed a confusion of ideas in my head that the powers of the Municipalities were being curtailed, on which assumption I entered upon a vehement protest, I withdraw my motion to refer the Bill to a Select Committee. I am very much thankful to Advocate-General for his kind elucidation.

Mr. A. B. Salem *(Mattancheri):* The word removal always carries a stigma. Why not use the word transfer ?

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Mr. M. Sivarama Menon *(Advocate-General):* The word removal in itself has no stigma. It has reference only to the removal of the officer from the Office of Commissioner.

Mr. A. B. Salem *(Mattancheri);* What I am submitting is when the Municipal Council passes a resolution it is really a removal from that office, a removal from the Municipality means that they don't want him there. Is it correct to use the word removal in the other case when the Government simply transfer him to another post ?

Mr. M. Sivarama Menon *(Advocate-General):* We have adopted the language that occurs in the Madras District Municipalities Act. In the case of "transfer" there is an implication that after the purpose for which he is transferred has been served out he will be transferred back to the former Office of Commissioner. The language used in the Madras Act is wider and we resolved to adopt it as it has stood the test of time.

Mr. C. J. Mathew *(Joint Secretary to Government):* I request that Standing Order No. 32 be suspended.

Mr. President: The Standing Order is suspended.

Mr. C. J. Mathew *(Joint Secretary to Government):* I move that the Bill be taken into consideration.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Clause 2 put and carried

Mr. P. P. Devassy *(Trichur-South):* My amendment relates only to 2nd proviso to clause 3 which runs "Provided further that if any question arises either before or after an election whether any person is or is not disqualified under this sub-section the question shall be referred to the Government whose decision shall be final." My Amendment is instead of the word "Government", the words "District Judge" of the district in which the municipality is situated shall be substituted.

In section 54 of the old Act the powers are conferred upon the District Magistrate and the District Court. In the matter of deciding whether a particular individual can represent a portion of the public it would be always better that it should be left to the dicision of a Court of law, rather than the executive interfering to say that so and so is not qualified to represent the public. I therefore move that the Amendment may be accepted.

Mr. K. T. Achyuthan *(Ezhuvas-Talappalli):* I second it.

Mr. A. V. Moothedan *(Chalakkudi):* May I know what is the provision in the Madras Municipal Act ?

Mr. C. J. Mathew *(Jont Secretary to Government):* The same as in the proposed Bill.

Mr. P. P. Devassy *(Trichur-South):* I do not think that since the Madras Act provides like that we should also follow it.

Mr. C. J. Mathew *(Joint Secretary to Government):* I oppose the amendment.

The House rose for lunch at 1-30 p.m. and re-assembled at 2-30 p.m. with the Deputy President in the Chair

Mr. C. J. Mathew *(Joint Secretary to Government):* Sir, I oppose the Amendment. The Government think that the best authorities to judge whether certain persons are Government servants or not are Government themselves. In all other cases of disqualification provided in the Act, the District Judge is the authority to decide the issue. But as regards this particular disqualification, *viz.*, whether a person is a Government servant or not, the Government consider that it should be left to them to decide the question finally. Therefore it is not possible to accept the Amendment.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, to facilitate a discussion of this Amendment may I be permitted to place certain facts before this House. This amendment was drafted on the lines of the law obtaining in British India. As a matter of fact even the explanation to section 16 of the Governn ent of Cochin Act is practically on the same lines as this. The power to decide whether any person is holding any Office of profit under the Government of Cochin to determine whether he is qualified to be a Member of this Council or not rests with the Diwan. His decision is final and is not liable to be questioned. That is the provision in the Government of Cocbin Act under which this very Hon'ble House is working. In the Madras City Municipalities Act, the proviso to section 51 will show that the decision as to whether a person is holding an office of profit under the Government rests with the Provincial Government of Madras. In the Madras District Municipalities Act also the proviso to section 48 of that Act will show that the same principle has been followed and that the decision as to whether any particular individual who is elected or who stands for election holds an office of profit under the Government rests with the Provincial Government. Section 54 of the Madras

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Local Boards Act is also enacted on the same principle. Therefore we find as a matter of fact that all the corresponding Legislations relating to this subject follow a uniform line in allocating to the Government the final decision as to whether a person is holding an office of profit or not under the Government. In the light of these enactments the question will be whether this Legislature should resolve upon a striking departure as is envisaged in the Amendment. My object in rising on this occasion is only to bring to the notice of this Hon'ble House that in drafting this Amendment we only fell into line with the other pieces of similar Legislation.

Mr. A. B. Salem *(Mattancheri):* I also think with the Advocate-General that these things must be left to the decision of the Government. The power to decide whether a particular person is or is not a Government servant has been left to the Executive Head in the Cochin Constitution Act as well as in all other cases. In these matters we want quick decision, whereas if the matter goes into Court naturally it would take its own time. By that time elections may be over and everything may be over and after the horse has fled from the shed there is no use of shutting the door. That is one of main reasons why in all the enactments Government is given the power. The decision will be taken quickly, right or wrong. Naturally the Diwan of Cochin will not be interested in the election of a Panchayat or a Municipality. It is no matter to him whether A or B is elected. So we get an impartial Officer who can decide quickly. That is one of the main reasons why that power has been left to the Executive.

Mr. A. V. Moothedan *(Chalakkudi):* I am unable to support this Amendment.

Mr. P. P. Devssy *(Trichur-South):* In view of the explanation offered I beg to withdraw my Amendment.

Amendment was by leave withdrawn

Clause 3, put and carried

Clause 1, Title and Preamble put and carried

Mr. C. J. Mathew *(Joint Secretary to Government):* I request that the Bill may be taken up and finally passed to-morrow.

Mr. M. Sivarama Menon *(Advocate-General):* I second it.

Motion put and carried

Resolutions

Mr. K. Narayana Menon *(Mulakunnathukavu):* Mr. President, Sir, I do not move my resolution in view of the promise made by the Diwan President yesterday that the resolution about the Grain purchase may be treated as the first resolution and discussed on Friday.

Mr. L. M. Pylee *(Latin-Christian's Ernakulam):* Sir, before I move my resolution, I would like to know whether resolution No. 17 on the same subject, standing in the name of Mrs. Joshua, also be moved along with this.

Deputy President: Resolution No. 17 may be moved along with this.

1. Dearness allowance to Government Servants

Mr. L. M. Pylee *(Latin-Christians Ernakulam):* Sir, I beg to move the resolution standing in my name.—"*This Council recommends to the Government that the rates of dearness allowance allowed by the Government of India to employees working on the Willingdon Island be sanctioned for Government servants of the State.*"

Sir, this resolution of dearness allowance has become a very dear question, and the minds of many people have been agitated over this important matter. The Hon'ble Members of this House might recollect that the dearness allowance started with Rs. 4 and on the 1st of Karkadagam last, this was raised to Rs. 6. It was limited to those who draw a salary of Rs. 60 and below. But it was found to be very inadequate and therefore at the last Budget Session a resolution was tabled and in the course of the discussion, the Government gave very good assurances that the matter will be sympathetically considered. The House was unanimous on this point, though it was not put to vote. The sense of the Conncil was very clear and unanimous on this matter and in view of the assurance given by the Government, it was hoped that something substantial would be done. But, Sir, nearly 4 months have elapsed, and what did the Government do? The Government did nothing in this matter and instead of that we find that the price of rice was enhanced. Further, Sir, yesterday in answer to one of the questions, the Government answered that they are "constantly examining" the question whether the rate of dearness allowance should be enhanced further. The Government have been "constantly examining" and anxiously examining and the Government have not yet been able to come to a definite conclusion. This is the sort of a constant anxiety on the part of the Government. This

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Repeal of enactments.

66. The enactments specified in the Schedule are hereby repealed.

SCHEDULE

1. Act I of 1067.
2. Amendment Act IV of 1114

APPENDIX III

THE COCHIN MUNICIPAL ACT (AMENDMENT) BILL

Preamble.—Whereas it is expedient further to amend the Cochin Municipal Act, XVIII of 1113; It is hereby enacted as follows.—

1. *Short title and commencement.*—This Act may be called the Cochin Municipal (Amendment) Act, of 111 and shall come into force at once.

2. *Amendment of section 13.*—For sub-section 4 of section 13 of the Cochin Municipal Act, XVIII of 1113, hereinafter referred to as the Act, the following shall be substituted.—

"1. (4) The Government may, at any time, remove the Commissioner from Office and shall do so if such removal is recommended by a resolution of the Council passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the sanctioned strength of the Council".

3. *Amendment of section 51.*—For sub-section (2) of section 51 of the Cochin Municipal Act, XVIII of 1113, substitute the following.—

"(2) No officer of Government shall be qualified for election or for holding office as an elected councillor:

Provided that this prohibition shall not apply to the holder of any office which does not involve both of the following incidents, namely.—

(*a*) that the incumbent is a whole-time servant of the Government; and

(*b*) that he is remunerated by either salary or fees:

Provided further that if any question arises either before or after an election whether any person is or is not disqualified under this sub-section the question shall be referred to the Government whose decision shall be final."

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